IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

CRL.A.No. 1525 of 2007()

M.C. NO. 38/2007 IN S.C. 247/07 of II ADDL. SESSIONS COURT, KOLLAM

APPELLANT: RESPONDENTS:

1. MEENAKSHY, W/O. SUNDARAN,
JAYAVILASAM, THEKKEKOTTUKAL, ITTIVA.

2. SUBAITHA BEEVI (SULFATHBEEVI),
W/O. SALIM, NIZA MANZIL, THEKKEKOTTUKAL, ITTIVA.

BY ADV. SRI.SIRAJ KAROLY

RESPONDENTS: COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. C.M. NAZAR, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CRL. M.A.NO. 8992/2007 IN CRL.A. NO. 1525/2007

DISMISSED

23.11.2007 SD/- V. RAMKUMAR, JUDGE.

/True Copy/

P.A to JUdge.

V. RAMKUMAR , J

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CRL. Apepal No.1525 OF 2007

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Dated this the 23rd day of November, 2007.

JUDGMENT

The appellants were the counter petitioners in M.C. No. 38/2007 on the file of the Additional Sessions Court, Kollam. They were the sureties for the 8th accused in S.C. No. 247/2007 on the file of the said court. The bond amount was Rs.50,000/- each.

2. Consequent on non-appearance of the 8th accused, the trial court initiated the proceedings against the appellants under Section 446 Cr.P.C as M.C. No. 38/2007. Except stating that the 8th accused has gone abroad the appellants had no other explanation. The court below accordingly directed each of them to pay the bond amount as penalty and also directed that if the recovery of the bond amount is ultimately found impractical, the appellants shall undergo imprisonment in a civil prison for one month. It is the said order which is assailed in this appeal filed under Section 449 Cr.P.C.

3. It is not open to the sureties to contend that since the accused for whom they stood sureties has gone abroad, it has become impossible for them to ensure his attendance before court and that the sureties should be exonerated from liability for the bond amount. But, at the same time having regard to the decision of the Apex Court in

1999 (4) Crimes 320 wherein the Apex Court had showed leniency towards the sureties for their inability to produce the accused who had gone abroad, I am of the view that some leniency should be shown in the matter of penalty. Accordingly, the penalty is reduced to 50%. Each of the appellants shall deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) by way of penalty before the court below within one month from today failing which they shall be liable for the consequences referred to in the impugned orders.

The Crl. R.P is disposed of accordingly.

V. RAMKUMAR, JUDGE.

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